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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 510

AMERICAN TRUCKING ASSOCIATIONS, INC., AND NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.,

Appellants,

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, ET AL,

Appellees

No. 511

THE PENNSYLVANIA RAILROAD COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, ET AL,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM

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Appellee, The National Industrial Traffic League, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree entered on June 11, 1965, by a district court of three judges specially constituted pursuant to 28 U.S.C. §§ 2284 and 2325, dismissing an action brought by appellants to set aside a report and order of the Interstate Commerce Commission, decided on March 2, 1964, in Docket No. MC-C-3626, *Motor Transportation of Property Within a Single State* (94 M.C.C. 541).

In its order dated May 21, 1962, the Interstate Commerce Commission instituted an interpretative rule-making proceeding for the purpose of determining whether for-hire motor transportation within the confines of a single state of property which has moved from, or will move to, points beyond the same state in private carriage, is interstate commerce subject to economic regulation under Part II of the Interstate Commerce Act.

The Commission's order instituting the proceedings provided for participation by interested parties through the submission of written statements of facts, views and arguments. Statements were received from several parties classified by the Commission as either Motor Carriers, Motor Carrier Associations, Rail Carriers, Manufacturers, Manufacturer Associations, State Commissions and Others. *Motor Transportation of Property Within A Single State,* 94 M.C.C. 541, 542.

The National Industrial Traffic League, the largest shipper organization in the country, whose members are industrial shippers, boards of trade, chambers of commerce, and associations of shippers, submitted a state-

ment asserting that the Commission lacked economic jurisdiction over the involved movements.

In its report, *Motor Transportation of Property Within a Single State, supra,* decided March 2, 1964, the Commission found that the for-hire portions of the involved movements were not subject to the Commission's economic regulation (No. 510, Jurisdictional Statement, p. 46).

Appellants brought this action in the United States District Court for the Eastern District of Pennsylvania, seeking to have the report and order of March 2, 1964 set aside on the ground that the Commission had incorrectly interpreted Part II of the Interstate Commerce Act.

The National Industrial Traffic League, having actively participated as a party before the Interstate Commerce Commission, moved to intervene as a defendant to support the decision of the Interstate Commerce Commission. Such motion was granted on December 10, 1964.

The district court held that the report and order of the Commission were in accordance with the applicable law and it dismissed the complaints. (No. 510, Jurisdictional Statement, p. 29)

ARGUMENT

The decision of the district court is clearly correct.

The issue here before the court has been decisively settled in *Pennsylvania R.R. Co. v. Public Utilities Commission,* 298 U.S. 170 (1936). Although the *Pennsylvania* case arose under Part I and not Part II of the Interstate Commerce Act, the logic and thrust of that decision are equally applicable to the instant case.

In that case, Mr. Justice Cardozo indicated, *inter alia,* that "transportation," as delineated by the specific statutory language, begins when the goods are put in the pos-

session of a "carrier," defined to be a common carrier. *Idem*, at 175-6.

The controlling language of the statute resolved the issue in that case, as it should in the case at bar. In the words of Mr. Justice Cardozo:

> "With the aid of these definitions the problem before us takes on a new simplicity." *Idem*, at 175.

The Court further indicated that conveyance by a common carrier could *not* be combined with carriage by an owner "for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt." *Idem*, at 177.

Lastly and most significantly, Mr. Justice Cardozo noted:

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be." *Idem*, at 177.

It is respectfully submitted that the purported distinctions alleged by the appellants between the *Pennsylvania* case and the case at bar are neither relevant nor material.

The necessary consequence of appellants' position is that there would be a fundamentally different rule as to economic regulation under Part I than under Part II of the Interstate Commerce Act. This would be determined solely by whether the "for hire" carrier is a railroad or a motor carrier. Such a result runs directly contrary to the National Transportation Policy which provides for:

> ". . . fair and impartial regulation of all modes of transportation subject to this Act, so administered as to recognize and preserve the inherent advantages of each; . . ." [49 U.S.C. preceding Sections 1, 301, 901, and 1001]

Congress, in the same expression of policy, further added:

". . . All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." [*ibid*]

A reasonable and plain reading of the statutory language of Part II of the Interstate Commerce Act clearly rejects any construction which might authorize Commission economic regulation, as distinct from safety regulation, where a for-hire motor carrier transports property solely within the confines of a single state. The statutory definitions contained in Sections 202(a), 203(a)(16), 203(a)(17), and 203(a)(19) [49 U.S.C. 302(a), 303(a)(16), 303(a)(17), and 303(a)(19)] clearly spell out Congressional intent to specifically delimit and restrict those modes of transport which are to be subjected to economic regulation by the I.C.C. The Commission is authorized to regulate "*transportation*" in interstate commerce by "*motor carrier*." The term "motor carrier" does not encompass "private carrier," except with respect to safety regulation as defined in Section 204(a)(3) [49 U.S.C. 304(a)(3)]. By unequivocal legislative definition a "private carrier" does not provide transportation subject to economic regulation since it is not a motor carrier within the clear statutory meaning.

The plain and unambiguous statutory language excludes from Commission economic regulation for-hire carriage by common or contract carriers whose operations are restricted to intrastate activity. Indeed, such operations are not "transportation" in interstate commerce. The statute clearly excludes Commission economic regulation of private carriers regardless of the nature of their operations.

A basic and time-honored rule of judicial interpretation requires that plain and unequivocal statutory language be read so as to attribute to this language the reasonable meaning clearly intended by the legislative draftsmen. *United States v. Public Utilities Commission*, 345 U.S. 295, 315 (1953); *Packard Motor Car Co. v. National Labor Relations Board*, 330 U.S. 485, 492-493 (1947); *United*

States v. American Trucking Associations, 310 U.S. 534, 543 (1940); *Taft v. Commissioner*, 304 U.S. 351, 359 (1938); *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935); see also *82 Corpus Juris Secundum*, Section 322(2).

Examination of the legislative history of the Motor Carrier Act reveals that Congress intended to eliminate private carriers from that class of carriers whose interstate operations were to be subject to economic regulation by the Commission. *Congressional Record*, Vol. 79, p. 5651.

It should finally be noted that to change the present and proper interpretation of Part II of the Interstate Commerce Act to prescribe economic regulation by the Interstate Commerce Commission of intrastate for-hire carriers would be enormously disruptive of present transportation practices and would impose overwhelming practical and economic burdens upon shippers and carriers alike.

If such change in the regulatory framework were for any reason warranted, this should properly be left to future Congressional action, with an appropriate opportunity for all interested parties, including members of the vast shipping public, to express their viewpoints before the national legislature.

CONCLUSION

We respectfully submit, therefore, that the appellants present no substantial question for the decision of this Court, and that the judgment and decree of the court below are plainly correct and that said judgment and decree should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John F. Donelan, attorney for appellee, The National Industrial Traffic League, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of October, 1965, in compliance with Rule 33 of the Revised Rules of Practice, I served copies of the foregoing Motion to Affirm on the several parties by mailing copies thereof, first-class mail, postage prepaid, as follows:

1. On the appellee, United States of America, copies to Hon. Nicholas DeB. Katzenbach, Attorney General of the United States; Hon. Thurgood Marshall, the Solicitor General, Department of Justice, Washington 25, D. C.; Drew J.T. O'Keefe, Esq., United States Attorney for the Eastern District of Pennsylvania, 4042 U.S. Courthouse, Philadelphia, Pa. 19107.

2. On the appellee, Interstate Commerce Commission, copies to Robert W. Ginnane, Esq., its General Counsel, and I.K. Hay, Esq., Deputy General Counsel, at the offices of the Commission, Washington, D.C. 20423.

3. On the appellant, American Trucking Associations, Inc., copies to Peter Beardsley, Esq., Richard R. Sigmon, Esq. and Harry J. Jordan, Esq., 1616 P Street, N. W., Washington, D.C. 20036; and to Ralph C. Busser, Jr., Esq., 1710 Locust Street, Philadelphia, Pa. 19103.

4. On the appellant Pennsylvania Railroad Co., copies to Carl Helmetag, Esq., Asst. General Counsel and Carmine J. Liotta, Esq., 1138 Transportation Center, Six Penn Center Plaza, Philadelphia, Pennsylvania.

5. On South Paterson Trucking Company, Inc. and Private Carrier Conference, Inc., copies to Joseph E. Keller, Esq. and W. H. Borghesani, Jr., Esq., 1712 N Street, N.W., Washington, D.C. 20036.

6. On the appellant National Motor Freight Traffic Association, Inc., copies to Bryce Rea, Jr., Esq., 917 Munsey Building, Washington, D.C. 20004.

7. On the Pennsylvania Public Utility Commission, copies to Joseph C. Brune, Esq., Chief Counsel, and William A. Goichman, Esq., Assistant Counsel, North Office Building, Harrisburg, Pennsylvania.

John F. Donelan